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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 165

NORMAN H. BUCK AND MIGUEL R. GUERRA,
APPELLANTS,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPERIOR COURT IN AND FOR THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

FILED JULY 2, 1951.

PROBABLE JURISDICTION NOTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE JUSTICE COURT OF NATIONAL TOWNSHIP, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

No. 2090

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

LOUIS C. YOUNGREN, Defendant

DOCKET ENTRIES

6/3/50—Bail for appearance deposited in the sum of $100.00(80) Bond.

Date 1950

June 5th. Complaint filed—Warrant issued.

June 8th. The defendant being now in open court is advised of his right to counsel and of his right to time in which to plead. Whereupon defendant waives time to plead and pleads not guilty to the within offense and demands trial by jury. Time for trial not waived. The Defendant consents that his trial be consolidated for trial with that of [fol. 2] Miguel R. Guerra and Norman H. Buck. Trial by jury set for June 26th, 1950.

June 26th. The defendant, by his counsel waives trial by jury and waives time for trial. It is stipulated between Harold Curtis, Deputy Dist. Attorney, on behalf of the People and Manuel Ruiz, counsel for defendant that the cause be submitted on an agreed statement of fact and written argument. Cause continued for the purpose of filing written briefs, by stipulation.

Sept. 13. Continued to Sept. 18, 1950 at 9 A. M.

Sept. 18. A stipulation of facts and written briefs of the people and the defendant having been filed and duly considered, the defendant being now before the court represented by his counsel, Manuel Ruiz, and the People being represented by Duane Carnes, Deputy District Attorney, and the issue having been duly considered by the Court, he is held guilty as charged in the complaint. The Defendant moves for arrest of Judgment on the following grounds:

[fol. 3] 1. The complaint does not charge the defendant with a public offense.

2. The evidence does not charge the defendant with a public offense.

3. There is no power given by public law wherein the Court has jurisdiction to enter the judgment.

Motion for arrest of judgment denied. Defendant waives time for pronouncement of sentence.

Wherefore It Is Ordered and Adjudged that the defendant pay a fine of $250.00 or serve one day in the County Jail of San Diego County for each $5.00 of the time not paid. $200.00 of said fine is suspended for two years on condition the defendant does not violate the ordinance which he is herein found violating. Execution of judgment is stayed by stipulation until the issues raised herein are decided in the appellate court, subject to the condition that the defendant at no time while this case is pending on appeal operate a taxicab in the unincorporated section of the County of San Diego without having a license from the Sheriff of San Diego County so to do.

[fol. 3a] Sept. 22. Notice of Appeal filed.

Sept. 26. On application the time in which to file statement on appeal is extended to Oct. 7, 1950.

Sept. 29. Statement on appeal filed.

I hereby certify that the foregoing is a transcript of the Docket in the above entitled cause in the above entitled court.

Dated Oct. 6, 1950.

(S.) Lowell Howe, Justice of the Peace of National Township.

[fol. 4] IN THE JUSTICE COURT OF NATIONAL TOWNSHIP

No. 2091

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MIGUEL R. GUERRA, Defendant

DOCKET ENTRIES

6/3/50—Bail for appearance deposited in the sum of $100.00(80) Bond.

Date 1950

June 5th. Complaint filed—Warrant issued.

June 8th—The defendant being now in open court is advised of his right to counsel and of his right to time in which to plead. Whereupon defendant waives time to plead and pleads not guilty to the within offense and demands trial by jury. Time for trial not waived. The Defendant consents that his trial be consolidated for trial with that [fol. 5] of Louis C. Youngren and Norman H. Buck. Trial by jury set for June 26th, 1950.

June 26th. The defendant, by his counsel waives trial by jury and waives time for trial. It is stipulated between Harold Curtis, Deputy Dist. Attorney, on behalf of the People and Manuel Ruiz, counsel for defendant that the cause be submitted on an agreed statement of fact and written argument. Cause continued for the purpose of filing written briefs, by stipulation.

Sept. 13. Continued to Sept. 18, 1950 at 9 A. M.

Sept. 18. A stipulation of facts and written briefs of the people and the defendant having been filed and duly considered, the defendant being now before the court represented by his counsel, Manuel Ruiz, and the People being represented by Duane Carnes, Deputy District Attorney, and the issue having been duly considered by the Court, he is held guilty as charged in the complaint. The Defendant moves for arrest of Judgment on the following grounds:

1. The complaint does not charge the defendant with a public offense.

[fol. 6] 2. The evidence does not charge the defendant with a public offense.

3. There is no power given by public law wherein the Court has jurisdiction to enter the judgment.

Motion for arrest of judgment denied. Defendant waives time for pronouncement of sentence.

Wherefore It Is Ordered and Adjudged that the defendant pay a fine of $250.00 or serve one day in the County Jail of San Diego County for each $5.00 of the fine not paid. $200.00 of said fine is suspended for two years on condition the defendant does not violate the ordinance which he is herein found violating. Execution of judgment is stayed by stipulation until the issues raised herein are decided in the appellate court, subject to the condition that the defendant at no time while this case is pending on appeal operate a taxicab in the unincorporated section of the County of San Diego without having a license from the Sheriff of San Diego County so to do.

Sept. 22. Notice of Appeal filed.

Sept. 26. On application the time in which to file state-
[fol. 7] ment on appeal is extended to Oct. 7, 1950.

Sept. 29. Statement on appeal filed.

I hereby certify that the foregoing is a trnscript of the Docket in the above entitled cause in the above entitled court.

Dated Oct. 6, 1950.

(S.) Lowell Howe, Justice of the Peace of National Township.

[fol. 8] IN THE JUSTICE COURT OF NATIONAL TOWNSHIP

No. 2092

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff

vs.

NORMAN H. BUCK, Defendant

DOCKET ENTRIES

6/3/50—Bail for appearance deposited in the sum of $100.00 (80) Bond.

Date 1950

June 5th. Complaint filed—Warrant issued.

June 8th. The defendant being now in open court is advised of his right to counsel and of his right to time in which to plead. Whereupon defendant waives time to plead and pleads not guilty to the within offense and demands trial by jury.

Time for trial not waived.

The Defendant consents that his trial be consolidated for [fol. 9] trial with that of Miguel R. Guerra and Louis C. Youngren.

Trial by jury set for June 26th, 1950.

June 26th. The defendant, by his counsel waives trial by jury and waives time for trial.

It is stipulated between Harold Curtis, Deputy Dist. Attorney, on behalf of the People and Manuel Ruiz, counsel for defendant that the cause be submitted on an agreed statement of fact and written argument.

Cause continued for the purpose of filing written briefs by stipulation.

Sept. 13. Continued to Sept. 18, 1950 at 9 A.M.

Sept. 18. A stipulation of facts and written briefs of the people and the defendant having been filed and duly considered, the defendant being now before the court represented by his counsel, Manuel Ruiz, and the People being represented by Duane Carnes, Deputy District Attorney, and the issue having been duly considered by the Court, he is held guilty as charged in the complaint.

The Defendant moves for arrest of Judgment on the following grounds:

1. The complaint does not charge the defendant with a public offense.

[fol. 10] 2. The evidence does not charge the defendant with a public offense.

3. There is no power given by public law wherein the Court has jurisdiction to enter the judgment.

Motion for arrest of judgment denied.

Defendant waives time for pronouncement of sentence.

Wherefore it is ordered and adjudged that the defendant pay a fine of $250.00 or serve one day in the County Jail of San Diego County for each $5.00 of the time not paid. $200.00 of said fine is suspended for two years on condition the defendant does not violate the ordinance which he is herein found violating.

Execution of judgment is stayed by stipulation until the issues raised herein are decided in the appellate court, subject to the condition that the defendant at no time while this case is pending on appeal operate a taxicab in the unincorporated section of the County of San Diego without having a license from the Sheriff of San Diego County so to do.

Sept. 22. Notice of Appeal filed.

Sept. 26. On application the time in which to file state-
[fol. 11] ment on appeal is extended to Oct. 7, 1950.

Sept. 29. Statement on appeal filed.

I hereby certify that the foregoing is a transcript of the Docket in the above entitled cause in the above entitled court.

Dated Oct. 6, 1950.

(S.) Lowell Howe, Justice of the Peace of National Township.

[fol. 12] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Docket No. 2090

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

LOUIS C. YOUNGREN

COMPLAINT—CRIMINAL (MISDEMEANOR)—Filed October 6, 1950

Personally appeared before me this 5th day of June, 1950 Lester Henneuse, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending Section 9 of County Ordinance 464 (New Series), as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Louis C. Youngren on or about the 4th day of June, 1950, in National Township, in said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to-wit, 1948 Ford Sedan; License #BEPP 1181, in the unincorporated area of the County [fol. 13] of San Diego, to-wit, at Orange & National Avenue, Harborside, without first having obtained a written permit from the Sheriff of San Diego County authorizing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealth with according to law.

(S.) Lester Henneuse.

Subscribed and sworn to before me this 5th day of June, 1950. (S.) Lowell Howe, Justice of the Peace of National Township, County of San Diego, State of California.

[File endorsement omitted.]

[fol. 14] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Docket No. 2091

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff

vs.

MIGUEL GUERRA, Defendant

COMPLAINT—CRIMINAL (MISDEMEANOR)—Filed October 6, 1950

Personally appeared before me this 5th day of June, 1950 Lester Henneuse, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending Section 9 of County Ordinance 464 (New Series) as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Miguel Guerra on or about the 3rd day of June, 1950, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to-wit, 1950 Ford Sedan, Commercial License # 1199, in the unincorporated area of the County of San Diego, to-wit, on U. S. #101, in San Ysidro, without first having obtained a written permit from the Sheriff of [fol. 15] San Diego County authorizing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

(S.) Lester Henneuse

Subscribed and sworn to before me this 5th day of June, 1950. (S.) Lowell Howe, Justice of the Peace of National Township, County of San Diego, State of California.

[File endorsement omitted.]

[fol. 16] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Docket No. 2092

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff

vs.

NORMAN H. BUCK, Defendant

COMPLAINT—CRIMINAL (MISDEMEANOR)—Filed October 6, 1950

Personally appeared before me this 5th day of June, 1950, Lester Henneuse, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending Section 9 of County Ordinance 464 (New Series), as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Norman H. Buck on or about the 4th day of June, 1950, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to-wit, a 1946 DeSoto Limousine, Engine #S11-9512, in the unincorporated area of the County of San Diego, to-wit, on Napels Street, in Harborside, without first having obtained a written permit from the Sheriff of San Diego County author-
[fol. 17] izing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

(S.) Lester Henneuse.

Subscribed and sworn to before me this 5th day of June, 1950. (S.) Lowell Howe, Justice of the Peace of National Township, County of San Diego, State of California.

[File endorsement omitted.]

[fol. 18] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Docket No. 2092

Docket No. 2091

Docket No. 2090

[Title omitted]

STIPULATED FACTS—Filed October 6, 1950

For purposes of this stipulation, we may assume the following to be the facts:

I

That on or about the 31st day of October, 1949, one Harry [fol. 19] M. Rocco, agent of Bert Strand, Sheriff of the County of San Diego, California, filed a criminal complaint against one Norman H. Buck and one Miguel R. Guerra in the Justice's Court of National Township, County of San Diego, State of California, copy of which is annexed hereto, marked Exhibit "A".

II

That Norman H. Buck and Miguel R. Guerra are natural born citizens of the United States and had been prior thereto engaged in the taxicab business both within the unincorporated territory of the County of San Diego, as well as in foreign commerce, wherein they transported passengers for hire from the Federal Zone within the Territory of Lower California, Republic of Mexico, to various points within the United States of America and the incorporated City of San Diego, as designated by said passengers for hire.

III

That at said time there was in force and effect an ordinance which had been passed by the County of San Diego, a political subdivision of the State of California and a body corporate and politic, designated as Ordinance 464 (N.S.), as amended by Ordinance 609 (N.S.). That said ordinance provided for the licensing of the proprietors of taxicab businesses, designated in said ordinance as "taxicab operators" and for the licensing of drivers

[fol. 20] employed by said operators and made unlawful the operating of taxicabs in the unincorporated territory of San Diego County, without a license; that Section 9 of said ordinance in part provided: "The Sheriff may deny the application, or, having issued a permit, may revoke the same if the applicant or taxicab driver is, in the opinion of the Sheriff, unfit to drive a taxicab". That the Sheriff of the County of San Diego published and promulgated certain rules and regulations governing the use and operation of taxicabs and cars for hire in the unincorporated area of San Diego County; That among said regulations was Regulation No. 6, providing in part: "Taxicabs licensed in counties other than San Diego County will not be permitted to pick up passengers in San Diego County; no taxicab or car for hire licensed by this Office will be permitted to pick up passengers outside the limits of San Diego County". That said defendants Norman H. Buck and Miguel R. Guerra, pursuant to the complaint referred to as Exhibit "A" herein, were arrested, incarcerated, and admitted to bail.

IV

That thereafter Norman H. Buck and Miguel R. Guerra instituted an action for injunction in the United States District Court, Southern District of California, Southern Division, against the County of San Diego, J. D. Keller, District Attorney of said county, and Bert Strand, Sheriff of said county, bearing file No. 1151-SD, under which action [fol. 21] they procured a temporary restraining order and a preliminary injunction against said defendants from proceeding with the prosecution of the offense referred to in Exhibit "A". The matter came on regularly for trial in the United States District Court, the Honorable Jacob Weinberger, Judge Presiding. The various contentions of the parties were advanced through their attorneys of record and from the evidence introduced at the trial of the action, the Court made its findings of fact, conclusions of law, and judgment, copy of which findings of fact, conclusions of law, and judgment is annexed hereto and made a part of this stipulation, marked Exhibit "B". That said United States District Court assumed jurisdiction on the grounds that the matter in controversy arose under the Constitution, law, or treaties of the United States of America, to wit: That there was involved the right of

the plaintiffs to engage in foreign commerce and whether the ordinance referred to constituted an unreasonable burden or interference upon the right of Norman H. Buck and Miguel R. Guerra to engage in foreign commerce.

It is hereby understood that the findings of fact signed by the Honorable Jacob Weinberger in the above-mentioned action, may be considered as accurate statements of fact for purposes of this stipulation.

V

That after the decision so rendered by the United ——
[fol. 22] District Court, a difference of opinion arose between counsel representing Norman H. Buck and Miguel R. Guerra and counsel representing the defendants in said action, concerning the interpretation of said findings of fact, conclusions of law, and judgment. That by reason of the fact that there was some confusion concerning whether the activities of Norman H. Buck and Miguel R. Guerra constituted foreign commerce, and to what extent the same were subject to local regulation or prohibition, if at all, or whether the same simply constituted local commerce, counsel for Norman H. Buck and Miguel R. Guerra advised them to continue their taxicab activities, but to restrict the same solely and exclusively to the picking up and discharging of passengers at points between the Mexican Federal Zone, within the Republic of Mexico, and points in the United States without the unincorporated area of the County of San Diego. That the defendant County of San Diego as a consequence of the decision of the United States District Court, thereafter amended the provisions of the ordinance and for the pertinency of this stipulation eliminated the provision of Section 9 thereof, to wit: "The Sheriff may deny the application, or, having issued a permit may revoke the same if the applicant or taxicab driver is, in the opinion of the Sheriff, unfit to drive a taxicab". Substituting in the place and stead of said portion, the following: "The Sheriff may deny the application, or, having issued the license may revoke the same if the
[fol. 23] Sheriff shall determine that the applicant or taxicab operator is of bad moral character". That said County of San Diego likewise deleted Regulation No. 6 therefrom, which formerly had read: "Taxicabs licensed in counties other than San Diego County will not be permitted to

pick up passengers in San Diego County; no taxicab or car for hire licensed by this Office will be permitted to pick up passengers outside the limits of San Diego County".

VI

That said Norman H. Buck and Miguel R. Guerra, as well as one Louis C. Youngren thereafter verbally solicited from the Office of the Sheriff of the County of San Diego a taxicab operator's license so that they might be able to operate within the unincorporated limits of the County of San Diego. That Capt. E. C. Riley, an agent of Bert Strand, Sheriff of the County aforesaid, denied the applications made by said persons for a taxicab operator's license and directed said defendants to cease all taxicab operations within the unincorporated area of San Diego County, pending the outcome of the offense charged in Exhibit "A", which action was pending in the Justice's Court of National Township. Thereafter said persons, under the advice of their attorney Manual Ruiz, Jr., as aforesaid, resumed their activities in the taxicab transportation of passengers for hire, and on the 3rd and 4th days of June, 1950, said [fol. 24] Louis C. Youngren, Miguel R. Guerra and Norman H. Buck were arrested by the Office of the Sheriff of the County of San Diego for driving out and operating a taxicab in the unincorporated area of the County of San Diego. That at the time of said arrests and immediately prior thereto said defendants had picked up passengers within the Republic of Mexico, on the Mexican side of the International Border, in what is known as the Mexican Federal Zone. That they had been instructed by their passengers and were carrying passengers at the time of their arrests within the unincorporated area of the County of San Diego, through which county they were passing for the sole purpose of discharging said passengers on a continuous passage from the Republic of Mexico to places other than the unincorporated area of the County of San Diego within the State of California.

VII

That at the time of each arrest, the arresting officers ascertained that the defendants had picked up their passengers in Mexico, and were driving through the unincorporated area of San Diego County to discharge said pas-

sengers without the unincorporated limits of San Diego County. That prior to each arrest, the Office of the Sheriff received a telephone call from the defendants' taxi competitors stationed on the American side of the Border, advising said Sheriff's Office that each defendant was [fol. 25] leaving Mexico with passengers to the United States. That based on said information the Sheriff's Office intercepted the defendants in County territory and arrested them. At the place of arrest, taxi competitors of the defendants, stationed on the American side of the Border and who would follow the defendants to the place of arrest, would have the passenger load of each defendant transferred to said competitor's taxicab and for hire would take them to the passengers' destination.

That the gravamen of the offense upon which the arrest of each defendant was predicated, was the fact that said defendants had not obtained a written permit from the Sheriff of the County of San Diego, authorizing them, and each of them, to operate a taxicab in the unincorporated area of the County of San Diego. Annexed hereto, marked Exhibit "C", are copies of the complaints filed by the Sheriff of San Diego County in the Justice's Court of National Township, County of San Diego, State of California, against Norman H. Buck, Miguel R. Guerra, and Louis C. Youngren.

VIII

That Norman H. Buck, and Miguel R. Guerra, by permission of the Justice's Court first had and obtained demurred to the original complaints on file in said actions, copy of which demurrer, on file in Master Dockets Nos. 1956 and 1957 of said Justice's Court, is annexed hereto [fol. 26] and made a part hereof by reference. That thereafter Harold Curtis, Esq., of the Office of the District Attorney of the County of San Diego, moved for a dismissal of said cases and the Honorable Lowell Howe, Judge Presiding, granted the motion to dismiss. That thereupon, said three defendants once again verbally applied for a taxicab operator's license to the Sheriff of the County of San Diego, explaining to the latter that the action pending in the Justice's Court of National Township, for violation of County Ordinance 464(NS), had been dismissed. That said Sheriff, Bert Strand, refused to issue a permit author-

izing said defendants to operate a taxicab within the unincorporated area of the County of San Diego.

For purposes of this stipulation it will be assumed that the defendant Louis C. Youngren is possessed of all of the licenses and permits possessed by his co-defendant Norman H. Buck in the findings of fact and conclusions of law of the Honorable Judge Jacob Weinberger, but that said Louis C. Youngren at the time of his arrest did not have a written permit from the Sheriff of the County of San Diego to drive and operate a taxicab in the unincorporated area of the County of San Diego. All three defendants are covered by insurance as to the type and amount required by the county authorities.

[fol. 27] Dated: This 10 day of July, 1950.

James Don Keller, (S.) by Harold P. Curtis, Dep., Attorney for the People of the State of California, Plaintiff; (S.) Manuel Ruiz, Jr., Attorney for the Defendants; Norman H. Buck, Miguel R. Guerra, Louis C. Youngren.

[File endorsement omitted.]

[fol. 28] EXHIBIT "A" TO STIPULATED FACTS

IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

NORMAN H. BUCK, Defendant

COMPLAINT-CRIMINAL (Misdemeanor)

Personally appeared before me this 31st day of October, 1949, Harry M. Rocco, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of Section 9 of Ordinance 464 of the County of San Diego has been committed by said defendant as follows: That said Norman H. Buck on or about the 31st day of October, 1949, in National

Township, in the said County of San Diego, State of California, and before the making or filing of this complaint, being then and there the driver of a taxicab, to wit, a motor vehicle used for the transportation of passengers for hire when driven by him at rates per mile, per trip, per hour, per day, per week, which vehicle being routed under the direction of the passengers, did then and there wilfully and unlawfully drive said taxicab in the unincorporated area of [fol. 29] the County of San Diego, to wit, Harborside, when his permit had been revoked, and the renewal of same was refused by the sheriff, the time for appeal to the Board of Supervisors had expired, and the decision regarding the revocation had become final;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

Harry M. Rocco.

Subscribed and sworn to before me this 31st day of October, 1949. ——— ———, Justice of the Peace of National Township, County of San Diego, State of California.

[fol. 30] IN THE JUSTICE'S COURT OF ——— TOWNSHIP, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MIGUEL ROBERTO GUERRA, Defendant

COMPLAINT-CRIMINAL (Misdemeanor)

Personally appeared before me this 31st day of October, 1949, Harry M. Rocco, of Sheriff's Office, in the County of San Diego, State of California; who, being first duly sworn, complains and says that the crime of violation of Section 9 of Ordinance 464 of the County of San Diego has been committed by said defendant as follows: That said Miguel Robert Guerra, on or about the 31st day of October, 1949, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, being then and there the driver of a taxicab,

to wit, a motor vehicle used for the transportation of passengers for hire when driven by him at rates per mile, per trip, per hour, per day, per week, which vehicle being routed under the direction of the passengers, did then and there [fol. 31] wilfully and unlawfully drive said taxicab in the unincorporated area of the county of San Diego, to wit, Harborside, when his permit had been revoked and the renewal of same was refused by the sheriff, the time for appeal to the Board of Supervisors had expired, and the decision regarding the revokation had become final.

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

Harry M. Rocco.

Subscribed and sworn to before me this 31st day of October, 1949. ——— ———, Justice of the Peace of National Township, County of San Diego, State of California.

[fol. 32] EXHIBIT "B" TO STIPULATED FACTS

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 1151 SD

NORMAN H. BUCK and MIGUEL R. GUERRA, Plaintiff,

v.

THE COUNTY OF SAN DIEGO, a Political Subdivision of the State of California and a Body Corporate and Politic, and J. D. Keller, District Attorney of the Sheriff of the County of San Diego, Defendants

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came on regularly for trial on the 23rd day of March, 1950, before the court sitting without a jury; Manuel Ruiz, Jr., and Alexander Ruiz, by Manuel Ruiz, Jr., appeared as attorneys for the plaintiff; James Don Keller, District Attorney of the County of San Diego, by Duane J. Carnes, Deputy District Attorney, appeared as attorneys

for the defendants, and Morey S. Levenson appeared as amicus curiae; and from the evidence introduced finds the facts as follows, to wit:

I

That the matter in controversy exceeds the sum of valuation of $3,000 exclusive of interest and costs and arises under the constitution, laws, or treaties of the United States of America, to wit: There is involved the right of the plaintiffs to engage in foreign commerce and the question [fol. 33] whether Ordinance No. 464 (New Series) of the County of San Diego, State of California, as amended by Ordinance No. 609 (New Series) of San Diego County constitutes an unreasonable burden or interference upon the right of the plaintiffs to engage in foreign commerce.

II

That the plaintiffs are natural born citizens of the United States and have been for some time prior to the commencement of the action herein engaged in the taxicab business in foreign commerce for a livelihood, transporting passengers for hire from a point within the territory of Lower California, Republic of Mexico, to various points within the United States of America including points within the incorporated City of San Diego and the unincorporated territory of the County of San Diego and other points as designated by said passengers for hire, and in the course of said business have picked up passengers within the unincorporated area of San Diego County and have discharged passengers within the unincorporated area of San Diego County.

III

That the plaintiff Norman H. Buck is possessed of a motor vehicle transportation license issued by the State of California Board of Equalization to engage in transportation of persons or property for hire by motor vehicles over the public highways of the State of California but subject to all laws of the State of California regulating the opera- [fol. 34] tions of motor vehicles for the transportation of persons or property for hire; that the plaintiff Norman H. Buck has a valid chauffeur's license from the Motor Vehicle Department of the State of California and a municipal license from the City of San Diego, California, to operate

one auto for hire as a business, which license covers a 1946 De Soto sedan operated by plaintiff Norman H. Buck; that plaintiff Norman H. Buck possesses a taxicab driver's license from the City of San Diego, licensing him to drive a taxicab, auto for hire, or sightseeing auto in accordance with the ordinances of the City of San Diego, *licensing him to drive a taxicab, auto for hire, or sightseeing auto in accordance with the ordinances of the City of San Diego.*

IV

That the plaintiff Miguel R. Guerra is possessed of a motor vehicle transportation license issued by the State of California Board of Equalization to engage in transportation of persons or property for hire by motor vehicles over the public highways of the State of California but subject to all laws of the State of California regulating the operations of motor vehicles for the transportation of persons or property for hire; that the plaintiff Miguel R. Guerra has a valid chauffeur's license from the Motor Vehicle Department of the State of California and a taxicab driver's license from the City of San Diego, California, licensing him to drive a taxicab, auto for hire or sightseeing auto in [fol. 35] accordance with the ordinances of the City of San Diego.

V

That the defendant County of San Diego is a political subdivision of the State of California situated within the Southern District of the State of California; that the defendant James Don Keller is the District Attorney and the defendant Bert Strand is the Sheriff for the County of San Diego.

VI

That the County of San Diego on the 5th day of April, 1946, adopted its Ordinance No. 464 (New Series) which was amended by Ordinance No. 609 (New Series) on May 12, 1947; that said ordinance provides for the licensing of the proprietors of taxicab businesses, designated in said ordinance as "taxicab operators" and for the licensing of drivers employed by such operators, and makes unlawful the operating of taxicabs in the unincorporated territory of San Diego County without a license; that section 9 of said ordinance as amended provides "The Sheriff may

deny the application, or, having issued a permit, may revoke the same if the applicant or taxicab driver is, in the opinion of the Sheriff, unfit to drive a taxicab."

VII

Said Sheriff published and promulgated certain rules and regulations governing the use and operation of taxicabs and cars for hire in the unincorporated area of San Diego [fol. 36] County; that among said regulations is Regulation No. 6 providing in part: "Taxicabs licensed in counties other than San Diego County will not be permitted to pick up passengers in San Diego County; no taxicab or car for hire licensed by this office will be permitted to pick up passengers outside the limits of San Diego County."

VIII

That the plaintiff Norman H. Buck was licensed as a taxicab operator and as a taxicab driver under said ordinance from on or about May 16, 1946, to October 17, 1949, in the County of San Diego; that the defendant Sheriff of said County on October 17, 1949, suspended said license and permit alleging as a cause of such suspension that said Buck had permitted a driver to operate his taxicab in the unincorporated area of San Diego County, which driver did not possess a valid San Diego County taxicab license or permit; that said Buck had failed to register with the Sheriff's Office a complete list of locations of taxicab stands from which he operated; that said Buck had picked up passengers outside the limits of San Diego County without having a valid license or permit authorizing picking up passengers in said territory outside San Diego County.

That said Norman H. Buck did not apply for a hearing before the Board of Supervisors as in said ordinance provided.

[fol. 37] That plaintiff Miguel R. Guerra was licensed as a taxicab operator under said license from May 26, 1946, until on or about February 1, 1949, at which time said Miguel R. Guerra voluntarily surrendered his taxicab operator's license to the Sheriff; that plaintiff Miguel R. Guerra was licensed as a taxicab driver under said ordinance from May 28, 1946, until April 4, 1949, at which time said license was revoked by said Sheriff, which revocation was sustained by

the Board of Supervisors after hearing on written charges as follows:

"May 26, 1946: Making a false application in that he—failed to give information to the effect that he had been arrested. Furnished a false address located in San Diego, California, while in effect he was a resident of Tia Juana, Mexico.

April 14, 1947: Operation of taxicabs, in the unincorporated area of San Diego County, without proper and approved insurance on taxi cabs.

October 17, 1947: Permitting operation of one of his taxi cabs, in the unincorporated area of San Diego County by a [fol. 38] driver who did not have a San Diego County taxi cab driver's license and permit.

February 23, 1949: The following report submitted by Deputies E. Howell and E. Henderson, Sheriff's South Bay Patrol Car:

> 'In making routine checks on all the taxi cabs operating at the Border, for proper licenses and general compliance with the County Ordinance regulating the operation of taxi cabs, Manuel Guerra was stopped for an inspection of his cab—he was warned about soliciting on the public highways and at that time he stated that due to the fact that deputies could not be on hand at all times he would solicit whenever we were not present.'

That no review of said decision of the Board of Supervisors was sought by the plaintiff Miguel R. Guerra in the courts of the State of California.

X

That since the respective licenses of each of the plaintiffs have been revoked as aforesaid, each of the plaintiffs have been arrested under complaints filed by said Sheriff charging each plaintiff with wilfully driving a taxicab in the unincorporated area of San Diego County without a valid San Diego County taxicab license or permit, and said Sheriff has threatened to continue to arrest plaintiffs at any time they are found carrying a passenger within said unincorpo- [fol. 39] rated area of the County of San Diego without said license.

As conclusions of law from the foregoing facts the Court concludes:

I

That this Court has jurisdiction in the premises.

II

That the plaintiffs are and each of them have been during all times material to this action, engaged in foreign commerce, but that their said business is subject to regulation and control under the police power of the State of California and the County of San Diego.

III

That Section 9 of said ordinance as amended, and as quoted in Paragraph VI of the findings herein, is void and unconstitutional in that no standard for the exercise of the Sheriff's discretion is set forth and as constituting an unlimited delegation to the Sheriff of the legislative powers of the Board of Supervisors.

IV

That Regulation No. 6 promulgated by said Sheriff and as quoted in Paragraph VII of the findings herein, is void as an attempted interference with and prohibition of interstate and foreign commerce insofar as it purports to restrict interstate or foreign commerce and is further void in that said ordinance contains no authority to the Sheriff to adopt [fol. 40] rules or regulations respecting activities of licenses or of taxicab operators or drivers outside of the territorial limits of San Diego County.

V

That except as hereinabove set forth said ordinance is a valid ordinance duly adopted in the exercise of the police power of the State of California and the County of San Diego.

VI

That in view of the findings and conclusions hereinabove made, equitable relief in the nature of a permanent injunction is not necessary, and the temporary injunction in effect should be dissolved, and a permanent injunction denied.

VIII

That each party should pay its or his costs of suit incurred herein.

Dated: April 18, 1950.

(S.) Jacob Weinberger, United States District Judge.

[fol. 41] Exhibit "B" to Stipulated Facts

In the United States District Court, Southern District of California, Southern Division

No. 1151 SD

Norman H. Buck and Miguel R. Guerra, Plaintiffs,

v.

The County of San Diego, a Political Subdivision of the State of California and a Body Corporate and Politic, and J. D. Keller, District Attorney of the County of San Diego, and Bert Strand, Sheriff of the County of San Diego, Defendants

Judgment

This cause came on regularly for trial before the court sitting without a jury on the 23rd day of March, 1950, Manuel Ruiz, Jr., and Alexander Ruiz, by Manuel Ruiz, Jr., appeared as attorneys for the plaintiff; James Don Keller, District Attorney in and for the County of San Diego, by Duane J. Carnes, Deputy District Attorney, appeared as attorneys for the defendants; Morey S. Levenson appeared as amicus curiae; the Court having heard the testimony and having examined the proofs offered by the respective parties and the Court being fully advised in the premises and having filed herein its findings of fact and conclusions of law and having directed that judgment be entered in accordance therewith,

Now Therefore

[fol. 42] It Is Hereby Ordered, Adjudged and Decreed that the portion of Section 9 of San Diego County Ordinance No. 464 (New Series) as amended, reading as follows "The Sheriff may deny the application or, having issued a per-

mit, may revoke the same if the applicant or taxicab driver is in the opinion of the sheriff unfit to drive a taxicab" is unconstitutional and void; in all other respects said ordinance is valid; that the portion of Regulation 6 of rules and regulations promulgated by the Sheriff of San Diego County governing the use and operation of taxicabs and cars for hire in the unincorporated area of San Diego County, reading as follows: "Taxicabs licensed in countries other than San Diego County will not be permitted to pick up passengers in San Diego County; no taxicab or car for hire licensed by this office will be permitted to pick up passengers outside the limits of San Diego County", is unconstitutional and void.

Plaintiffs are denied judgment for injunction. Each party shall pay his or its own costs. The injunction pendente lite is dissolved.

Dated this 19th day of April, 1950.

(S.) Jacob Weinberger.

[fol. 43] EXHIBIT "C" TO STIPULATED FACTS

IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

NORMAN H. BUCK, Defendant

COMPLAINT—CRIMINAL (Misdemeanor)

Personally appeared before me this 5th day of June, 1950, Lester Hennense, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending Section 9 of County Ordinance 464 (New Series), as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Norman H. Buck on or about the 4th day of June, 1950, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to wit: a 1946 DeSoto

Limousine, Engine #S11-9513, in the unincorporated area of the County of San Diego, to wit: on Napels Street, in [fol. 44] Harborside, without first having obtained a written permit from the Sheriff of San Diego County authorizing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

_____

Subscribed and sworn to before me this 5th day of June, 1950. _____, Justice of the Peace of National Township, County of San Diego, State of California.

_____

[fol. 45] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MIGUEL GUERRA, Defendant

COMPLAINT—CRIMINAL (Misdemeanor)

Personally appeared before me this 5th day of June, 1950 Lester Henneuse, of Sheriff's Office, in the County of San Diego, State of California, who being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending section 9 and County Ordinance 464 (New Series) as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Miguel Guerra on or about the 3rd day of June, 1950, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to wit: 1950 Ford Sedan, Commercial license #1199, in the unincorporated area of the County of San Diego, to wit: on U. S. #101, in San Ysidro, without [fol. 46] first having obtained a written permit from the Sheriff of San Diego County authorizing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

—— ——.

Subscribed and sworn to before me this 5th day of June, 1950. —— ——, Justice of the Peace of National Township, County of San Diego, State of California.

——

[fol. 47] In the Justice's Court of National Township, County of San Diego, State of California

The People of the State of California, Plaintiff;

vs.

Louis C. Youngren, Defendant

Complaint—Criminal (Misdemeanor)

Personally appeared before me this 5th day of June, 1950 Lester Henneuse, of Sheriff's Office, in the County of San Diego, State of California, who, being first duly sworn, complains and says that the crime of violation of County Ordinance No. 958 (New Series) amending Section 9 of County Ordinance 464 (New Series), as amended by Ordinance No. 609 (New Series) has been committed by said defendant as follows: That said Louis C. Youngren on or about the 3rd day of June, 1950, in National Township, in the said County of San Diego, State of California, and before the making or filing of this Complaint, did wilfully and unlawfully drive and operate a taxicab, to wit: 1948 Ford Sedan, Commercial License # 1181, in the unincorporated area of the County of San Diego, to wit: on U. S. # 101, in San Ysidro, [fol. 48] without first having obtained a written permit from the Sheriff of San Diego County authorizing said defendant so to do;

Said complainant therefore prays that a warrant may be issued for the arrest of said defendant and that he may be dealt with according to law.

—— ——.

Subscribed and sworn to before me this 5th day of June, 1950. —— ——; Justice of the Peace of National Township, County of San Diego, State of California.

[fol. 48a] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Master Docket No. 1956

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MIGUEL ROBERTO GUERRA, Defendant

Master Docket No. 1957

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

NORMAN H. BUCK, Defendant

DEMURRER TO STIPULATED FACTS

Comes now the defendants Miguel Roberto Guerra and Norman H. Buck, after withdrawal of plea of not guilty by permission of court first had and obtained, and each for himself, separately, demurs to the complaints on file in the above entitled actions upon the ground that the facts stated do not constitute a public offense and on the further ground that said complaints contain matter which, if true, under the law would constitute a legal justification or excuse of the offense charged, and a legal bar to the prosecution thereof.

[fol. 48b] The specifications of the demurrer are as follows:

I

The complaints on file make direct reference to the Statute which defines the offense, to wit: the violation of Section 9 of Ordinance 464 N. S. of the County of San Diego. That said statute, in so far as definite elements which formerly were defined and included in the offense, has been declared unconstitutional by a court of competent jurisdiction, and the same is void, and said elements included in the offense no longer exist as part and parcel of the statute defining the offense, thus, the complaints charge the defendants with driving a taxicab in the unincorporated area of the County of San Diego "when their respective permits had been revoked and the renewal of the same had been refused by the Sheriff".

That said offense presupposes the fact that the Sheriff had issued a permit and had revoked the same; that Section 9 of Ordinance 464 N. S. of the County of San Diego contains the following language: "the Sheriff . . . having issued a permit, may revoke the same if the applicant or taxicab driver is, in the opinion of the Sheriff, unfit to drive a taxicab." That said Section 9 of Ordinance is void and unconstitutional in that no standard for the exercise of the Sheriff's discretion is set forth, and as constituting an unlimited delegation to the Sheriff of the legislative [fol. 48c] powers of the Board of Supervisors of the County of San Diego. That inasmuch as the portion of the statute constituting an element of the offense is void, under the charge as made the Justice's Court may pronounce a judgment of conviction, when, in fact, the statute which defines the offense or upon which the charge is predicated, has no validity.

II

That said complaints are further subject to demurrer inasmuch as they state that the taxicabs at the time of the commission of the offense were "being routed under the direction of the passengers" without stating that the passengers were routing the taxicabs within the unincorporated area of the County of San Diego.

That at the time of the alleged commission of the offense, Regulation No. 6, passed pursuant to the Ordinance by the Sheriff, and to which Ordinance reference is made upon the face of the complaint, and constituting an element of the crime defined and included in the offense, provided in part: "Taxicabs licensed in counties other than San Diego County will not be permitted to pick up passengers in San Diego County; no taxicab or car for hire licensed by this Office will be permitted to pick up passengers outside the limits of San Diego County."

That since the alleged commission of the offense, said Regulation No. 6, has been declared void by a court of competent jurisdiction, as an attempted interference with and [fol. 48d] prohibition of interstate and foreign commerce in so far as it purports to restrict interstate or foreign commerce and was further declared void in that said ordinance contains no authority to the Sheriff to adopt rules or regulations respecting the activities of licensees or of

taxicab operators or drivers outside of the territorial limits of San Diego County.

As a consequence of the fact that said regulation constituting a portion of the statute is now void, as aforesaid, it is essential in charging the offense to negative the exception and state that the defendants, and each of them, were being routed under the direction of the passengers to within the unincorporated area of the County of San Diego. That without such negative exception the accused do not receive sufficient notice of which offense is charged and the accused are not advised of the charge that they will be forced to meet at the time of the trial. That under the charge as made the Justice's Court may pronounce a judgment of conviction when the regulation, part of the original statute defining the offense and upon which the charge is predicated, no longer exist.

That the imperfections and defects hereinabove set forth, are prejudicial to the substantial rights of the defendants upon the merits.

Wherefore these defendants pray for a dismissal of the complaints.

(S.) Manuel Ruiz, Jr., Attorney for Defendants.

[fol. 48e] Authorities in Support

P. C. 1002; P. C. 1004 (4) (5); P. M. 1005

Norman H. Buck and Miguel R. Guerra vs. The County of San Diego, et al., case No. 1151-S. D. In the U. S. Dist. Ct. So. Dist. of Calif. Southern Division, and authorities submitted to said Ct. to sustain the judgment.

[fol. 49] In the Justice's Court of National Township

Docket No. 2092. Docket No. 2091. Docket No. 2090

[Title omitted]

Notice of Appeal—Filed September 22, 1950

Notice is hereby given that the defendant hereinabove and each of them do by these presents appeal to the Superior Court of the State of California in and for the County

[fol. 50] of San Diego from that certain Order denying Motion in Arrest of Judgment as well as final Judgment of Conviction made and rendered by the above Court on the 18th day of September, 1950.

(S.) Manuel Ruiz, Jr., Attorney for Defendants,

[File endorsement omitted.]

[fol. 51] AFFIDAVIT OF SERVICE BY MAIL—Omitted in Printing

[fol. 52] IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

[Title omitted]

STATEMENT ON APPEAL—Filed September 29, 1950

The above cause was tried before the Honorable Lowell Howe, by submission on stipulated facts, and judgment of guilty was rendered against the defendants on the — day of September, 1950. James Don Keller by Duane J. Carnes, [fol. 53] Deputy District Attorney, appeared as Attorneys for the People of the State of California, and Manuel Ruiz, Jr., for defendants.

In view of the fact that the case was tried upon stipulated facts, there is no reporter's transcript.

It is agreed by the parties, therefore, that the portion of the proceedings in the court below, referred to as "Stipulated Facts" and certified to the Superior Court pursuant hereto, constitute the evidence and be made a part hereof by reference, for a review of the specification of grounds upon appeal.

The appellant does hereby urge and specify the grounds upon which he intends to rely on appeal, as follows:

1. That the judgment of conviction is against the evidence and against the law.

2. That the ordinance upon which the conviction is based is contrary to the constitution of the United States in that its enforcement amounts to an unconstitutional burden on foreign commerce.

(S.) Manuel Ruiz, Jr., Attorney for the Defendants.

ORDER

Within the time extended for filing, the foregoing statement is certified, settled, allowed, and ordered filed as Defendant's Statement on Appeal.

Dated: October 6th, 1950.

(S.) Lowell Howe, Judge.

[File endorsement omitted.]

[fol. 54] (AFFIDAVIT OF SERVICE BY MAIL—Omitted in printing)

[fol. 55] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO, APPELLATE DEPARTMENT

Superior Court No. 161612

Justice's Court Nos. 2092, 2091, 2090

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

NORMAN H. BUCK, Defendant and Appellant

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

MIGUEL R. GUERRA, Defendant and Appellant

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

LOUIS C. YOUNGREN, Defendant and Appellant

OPINION—Filed December 14, 1950

[fol. 56] Appeals from the Justice's Court of National Township of San Diego County, California, from judgments

of conviction of violation of county ordinance and from orders denying motion in arrest of judgment. Hohorable Lowell Howe, Judge. *Judgments, and order denying motion in arrest of judgments, affirmed.*

Manuel Ruiz, Jr., for Appellants.

James Don Keller, District Attorney, by Duane J. Carnes, Deputy District Attorney, for Respondent.

BURCH, J.:

The defendants were convicted of a violation of Section 9 of San Diego County Ordinance No. 464 (N. S.) as amended by Ordinance No. 609 (N. S.), which provides that "it shall be unlawful for any person to drive or to be in actual physical control of any taxicab in the unincorporated areas of the County of San Diego without first obtaining a permit in writing so to do from the Sheriff of the County of San Diego." It then requires the payment of a $1.00 fee annually; and examination by the sheriff as to the applicant's knowledge of the provisions of the ordinance; knowledge of the Vehicle Code, traffic regulations and geography of the county; and that the sheriff may grant or deny the permit or may revoke the same if he finds the person holding any such permit to be of bad moral character or convicted of an offense involving moral turpitude. Provision is made that if the permit is refused or revoked by the sheriff the applicant may appeal to the Board of Supervisors for a hearing thereon.

[fol. 57] According to the agreed statement of facts, the defendants were arrested while driving taxicabs on the highways in unincorporated territory in San Diego County. The defendants were not stopping to pick up or discharge passengers, using the highways only as a means of transporting passengers for hire from the Republic of Mexico, on their way to a destination outside of the unincorporated areas of the County of San Diego. This was their usual course of business. When not in use the taxicabs were stationed in Tijuana, Republic of Mexico, and all passenger service originated there. The defendants are American citizens.

Each of the defendants had applied for and been denied the license required by the ordinance in question. One only of the defendants appealed from the sheriff's decision to the Board of Supervisors, but his appeal was denied. No

one of the defendants has sought in the courts a review of the administrative action. Instead they contend that the ordinance, as applied to them, contravenes the commerce clause of the federal constitution, (Article I, Section 8), and is therefore void.

Since the constitution and laws of Congress are the supreme laws of the land, we will have to decide whether the ordinance is valid as tested by the commerce clause and acts of Congress thereunder. In this connection, it has been held that neither a tax measure nor a police regulation by [fol. 58] local authority may unduly burden nor be discriminatory as to the commerce clause. Our concern here is with a police regulation.

The defendants were engaged in foreign commerce. (*Bob-Lo Excursion Co. v. Michigan*, 333 U. S. 28.) The ordinance is an exercise of the State's police power properly delegated by the legislature of the State to the Board of Supervisors of the county. (*In re Martinez*, 22 Cal. (2d) 259). The federal power over commerce (Article I, Section 8, Clause 3, United States Constitution) is supreme (Article VI, Section 1, Clause 2, United States Constitution). The distribution of power between the State and federal system in regard to commerce belongs to Congress. (*Panhandle Eastern Pipe Line Co. v. Public Service Commission, etc.*, 332 U. S. 507.) In the event of conflict in that field the local law must give way to the supremacy of the federal law. (*Francis, et al. v. Southern Pacific Co.*, 333 U. S. 445.) This is true whether the local law be under the taxing power or under the police power in its more conventional sense. (*Freeman v. Hewit*, 329 U. S. 249.) Not all burdens upon commerce but only undue or discriminatory ones are forbidden. (*Postal Telegraph Cable Co. v. Richmond*, 249 U. S. 252, 259; *Western Live Stock, et al.* v. *Bureau of Revenue, et al.*, 303 U. S. 250, 254; *McGoldrick v. Berwind-White Coal Mining Co.*, 309 U. S. 33, 46; *Nelson v.* [fol. 59] *Sears, Roebuck & Co.*, 312 U. S. 359; *Nippert v. City of Richmond*, 327 U. S. 416, 425.) It was recognized in *California v. Thompson*, 313 U. S. 109, that positive intervention by Congress was required to displace the reserve power of the State to promote safety and honesty in the business of motor carrier transportation beyond State lines. After Congress "enters the field" the State law and the State's power to enact law in the same field, stands or falls

upon the intent of Congress to exercise exclusive jurisdiction, or to accept the aid of the State. (*California v. Zook, et al.*, 336 U. S. 725.)

Congress entered the field of motor vehicle carriers for the first time by Act of August 9, 1935. (49 U. S. C. A. 301-327.) The National Transportation Policy Act was enacted September 18, 1940, Chapter 722, Title I, Section 15, 54 Statutes 919. One of the declared purposes of the latter Act is "to cooperate with the several states and the duly authorized officials thereof." By Section 303(b) of the above motor vehicle act "taxicabs, or other motor vehicles performing a bona fide taxicab service having a capacity of not more than six passengers and not operated on a regular route or between fixed termini" are excluded except "It shall be the duty of the commission to regulate the . . . qualifications and maximum hours of service of employees, and safety of operation and equipment." In performance of this mandate the Interstate Commerce Commission has [fol. 60] provided rules and regulations. (Code Federal Regulations, Parts 190-197.) These cover general definitions, hours of service, qualifications of drivers, driving of motor vehicles, accident reports, inspection and maintenance and carrying of explosives or other dangerous articles by motor vehicles.

Our question for the purpose of decision here is narrowed to whether the ordinance conflicts or coincides with the federal law above outlined. In this respect the ordinance exacts of the defendants at the point where they complain an annual fee of $1.00 which is no more than the cost of its administration. Defendants offer no evidence to the contrary. (*Western Union Telegraph Co. v. Borough of New Hope*, 187 U. S. 419; *Postal Telegraph-Cable Co. v. City of Richmond*, 249 U. S. 252; *Sprout v. City of South Bend*, 277 U. S. 163, 169; *Interstate Transit, Inc. v. Lindsey*, 283 U. S. 183; *South Carolina State Highway Dep't v. Barnwell Bros. Inc.*, 303 U. S. 177; *Aero Mayflower Transit Co. v. Board of Railroad Commissioners, etc.*, 332 U. S. 495.)

One attacking as unreasonably burdening commerce the validity of a regulatory or taxing measure enacted by State authority for the use of the highways, has the burden of showing a want of reasonable relation to the increased cost of maintenance and policing due to such traffic. (*Aero*

[fol. 61] *Mayflower Transit Co. v. Board of Railroad Commissioners, etc., supra.*)

The principal requirement of the ordinance is that the carrier's operator be of good moral character. This is a reasonable requirement of police regulations. (*In re Porterfield*, 63 Cal. App. (2d) 518, 536.) There is no such specific requirement in the federal regulations, Parts 190-197. Having in mind the purpose of the Act of 1940, *supra*, to cooperate with the State and its duly authorized officials, we can see no conflict here.

In *California v. Zook, et al.*, 336 U. S. 725, Sections 654.1, 654.3, of the California Penal Code were found not to conflict with the Federal Motor Carrier Act though the latter "has substantially the same provision." A quotation from the Zook case may be helpful: "It is difficult to believe that the I. C. C. intended to deprive itself of effective aid from local officers experienced in the kind of enforcement necessary to combat this evil—aid of particular importance in view of the I. C. C.'s small staff." (Page 737).

The State's interest in its own highways has been recognized superior to the federal interest against "burdening" commerce in *South Carolina State Highway Dep't v. Barnwell Bros.*, 303 U. S. 177, (State law forbids on highways vehicles of width greater than 90 inches); *Clark, et al. v.* [fol. 62] *Poor, et al.*, 274 U. S. 554, 557 (carrier required to procure a certificate and pay a tax for use of highways); *Maurer, et al. v. Hamilton, et al.*, 309 U. S. 598 (regulation of "size and weight"); *Hendrick v. State of Maryland*, 235 U. S. 610 (licensing and registration required of non-resident operator); *H. P. Welch Co. v. New Hampshire*, 306 U. S. 79 (State law limits hours on duty); *Aero Mayflower Transit Co. v. Board of Railroad Commissioners, etc.*, 332 U. S. 495 (annual State tax levied for use of highways).

Defendants argue that *H. P. Hood & Sons v. DuMond*, 336 U. S. 525, marks a departure from earlier decisions in interpreting the effect of local police regulations upon the federal commerce clause. The Court stated quite to the contrary: "New York's regulations . . . have been complied with. It is only additional restrictions, imposed for the avowed purpose and with the practical effect of curtailing the volume of interstate commerce, to aid local economic interests, that are in question here."

Defendants contend that what San Diego County may do, every county and municipality in the State may do. The force of the argument in a proper case was recognized in *Nippert v. City of Richmond*, 327 U. S. 416, 425. The record does not disclose that defendants are required by any other political division than San Diego County to evidence their fitness to operate taxicabs on the State's highways.

A peculiar situation of San Diego County in relation [fol. 63] to taxicab passenger traffic across the border from Mexico would seem to put the county in a position to exercise such control over this traffic as might ordinarily be exercised by the State legislature since taxicab control is delegated by the State to the county. (*See Bob-Lo Excursion Co. v. Michigan, supra.*)

We are of the opinion that the ordinance's requirement of examination to show good moral character of taxicab operators does not conflict with the Federal Motor Carrier Act, nor does it coincide with any regulation of the Interstate Commerce Commission (Code Federal Regulations, Parts 190-197). The ordinance, moreover, in the respect mentioned, is not in conflict with the National Transportation Policy Act of 1940.

The judgments are affirmed.

(S.) Burch, J.

We concur.

(S.) Turrentine, P. J. (S.) Glen, J.

[File endorsement omitted.]

[fol. 64] In the Superior Court of California

[Title omitted]

Petition for Rehearing—Filed December 21, 1950

Come now the above named appellants and respectfully petition the Honorable Court to vacate the decision and judgment heretofore rendered in the above entitled cause, and enter a new judgment overruling the action of the lower Court.

Such petition is based upon the grounds that the Court erred in sustaining the conviction of the lower Court, which conviction was against the evidence and against the law.

Appellants will urge and specify points within said grounds by further writing in view of the fact that they did not receive notice of the Court's opinion until December 18, 1950.

[fol. 65] Wherefore, appellants pray for judgment, and that the judgment of the Court heretofore entered be vacated and set aside, and the Court enter a new judgment reversing the action of the lower Court.

Respectfully submitted. (S.) Manuel R. Ruiz, Jr., by H. M., Attorney for Appellants, 704 South Spring Street, Los Angeles 14, California.

Received a copy of the within this 21 day of December, 1950.

James Don Keller, district Attorney, By (S.) A. J. O'Keefe, Attorneys for Respondent.

[File endorsement omitted.]

[fol. 66] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING

(Supplement)

Appellants heretofore filed their Petition for Rehearing upon the grounds that the court erred in sustaining the conviction of the lower court, which conviction was against the evidence and against the law, and do hereby supplement the same more specifically as follows:

I

The Appellate Court failed to consider and pass upon the point that the defendants and each of them were deprived of their constitutional rights, under color of law.

The Appellate Court restricted its decision and opinion [fol. 67] to the point that the ordinance was on its face consistent with the Federal Constitution, and failed to

determine that the acts of the Sheriff of the County of San Diego exceeded the local application of the ordinance, and under color or pretense thereof, nevertheless violated the Federal law, and arrested the defendants while lawfully engaged in foreign commerce, by the unconstitutional enforcement of the law, amounting to a PROHIBITION. The evidence indicated that the license issued to defendant Buck was cancelled because said defendant stationed his cab and operated out of Mexico, without the permission of the Sheriff. Said defendant's character and morals were not remotely involved in the arbitrary cancellation.

II

The Appellate Court erroneously assumed that the annual license fee charged by respondent as a pre-requisite to the physical control of a taxicab within respondent County Limits, was the munificent sum of $1.00 per year, when in fact the Ordinance in evidence required that defendants first apply to the Sheriff and procure from the tax collector a license and pay an annual license fee of $50.00. The palpable difference in amount impels a reconsideration as the presumptions of law indulged in by the Appellate Court, are inapplicable. In any event, defendants tendered the $50.00 to respondent Sheriff, which was refused. That any tender or applications made for license by one engaged [fol. 68] in foreign commerce is refused.

III

The Appellate Court failed to reconsider that in a prior Federal case between the same parties involving the same licenses and which constitutes an estoppel in evidence, the United States District Court, in its decision holding a portion of the ordinance unconstitutional, did not hold that an appeal to the San Diego Board of Supervisors or State Courts, was a pre-requisite to a valid attack on the constitutionality of the ordinance. That said decision forms, by stipulation, a part of the case at bar, and is consistent with the defendant's theory that a license from the County of San Diego is not essential to engage in foreign commerce.

IV

The Appellate Court assumed that the only political subdivision requiring "fitness to operate taxicabs on the

State highways" was the County of San Diego. The record indicated that defendants were possessed of Chauffeurs' Cards permitting the driving of taxicabs for hire, by the Chief of Police of the City of San Diego, in addition to being possessed of Chauffeurs' licenses isued by the Department of Motor Vehicles of the State of California, as well as Motor Vehicle Transportation Licenses which authorizes the defendants and each of them, to engage in transportation of persons or property for hire or compensation [fol. 69] over the public highways of the State of California.

Wherefore, appellants' Petition for Rehearing. Dec. 27, '50.

(S.) Manuel R. Ruiz, Jr., Attorney for Appellants, 704 South Spring Street, Los Angeles 14, California.

[fol. 70] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

REPLY TO PETITION FOR REHEARING—Filed Jan. 2, 1951

In reply to Appellants' points as presented Respondents People of the State of California allege:

I

As to alleged discriminatory enforcement of the ordinance by refusing or revoking licenses of Appellants, the remedy is clearly by following the administrative procedure set forth in the ordinance and provided by the California Constitution and decisions. An appeal lies to the Board of Supervisors and certiorari or mandamus may be used in the courts to review arbitrary denial or revocation of a license. Such a remedy being provided, an ordinance is not to be held unconstitutional because a license is refused or revoked. The remedy is not for the court to sanction defiance of the ordinance but instead for the aggrieved party to exhaust the remedies provided. As stated in Re- [fol. 71] spondent's authorities, official and administrative action is presumed to be taken in good faith and affirma-

tive evidence must be presumed to establish the contrary. Among the authorities on this point are:

Code Civ. Proc. sec. 1963 sub. 15
Alexander v. Scattergood, 51 Cal. App. 2d 127
Los Angeles v. Glassell, 203 Cal. 44

In addition to the charge against Buck that he had picked up passengers outside the county without having an effective and applicable license there to operate, Buck was also charged with having failed to register with the Sheriff a complete list of the taxicab stands from which he operated and more important, was charged with having permitted a driver to operate his cab in the unincorporated area of San Diego County which driver did not possess a valid San Diego County taxicab license or permit. (Federal court findings, p. 4 lines 19-28).

Buck sought no relief from the Board of Supervisors or the California courts.

Guerra's revocation is apparently not challenged in these proceedings; numerous sufficient charges were made by the Sheriff and sustained by the Board of Supervisors. (Federal court findings, p. 5).

Apparently Youngren's applications led to no further proceedings; he was not a party to the Federal court proceeding.

[fol. 72]

II

As to failure of the court to consider the reasonableness of the $50 annual fee to engage in business as well as the $1 fee for driving a taxi, the complaint charged only a violation of sec. 9, driving without obtaining the $1 permit, Sec. 14 declares that each section is enforceable regardless of the validity of any other.

Respondents in their brief discussed at length the validity of the $50 fee and believe that the arguments and authorities there set forth are sound and applicable.

III

It is admitted that the Federal court decision does not preclude this court from reconsidering constitutional questions. This court has considered such questions.

The constitutionality of the application of a valid ordinance, as distinct from the constitutionality of the ordi-

nance on its face, involves the problem of its internal provisions for review of possible arbitrary application by the sheriff. If administrative remedies are provided they must be exhausted before judicial interference can be justified or before it can be said that the administration of the ordinance oversteps constitutional limitations.

In re Harmann, 25 Cal. App. 2d 55 at 60
In re Flaherty, 105 Cal. 558, 562
McDonough v. Goodcell, 13 Cal. 2d 741
[fol. 73] Cantrell v. Los Angeles, 87 Cal. App. 2d 471
In re West, 75 Cal. App. 591

However, on the record before the court we think the necessary conclusion on this point is, not only must administrative remedies be exhausted but that since official regularity of action is presumed, there is a complete failure of any evidence or admission in the record to establish the contrary.

IV

As to other licenses or certificates held by appellant, the Motor Vehicle Transportation License is purely a revenue measure and does not involve local regulation. Rev. & Tax Code secs. 9601-10501. The chauffeur's license is necessary to obtain a permit under the ordinance but obviously does not establish conclusively that its possessor has all the qualifications reasonably required by the ordinance. The fact that appellants have obtained licenses from the City of San Diego fortifies the conclusion that local governmental agencies may properly regulate the driving of taxicabs within their geographical limits as held in In re Martinez, 22 Cal. 2d 259.

The application for a rehearing should be denied.

Respectfully submitted, James Don Keller, District Attorney in and for the County of San Diego, State of California. By /s/ Duane J. Carnes, Deputy.

[File endorsement omitted.]

[fol. 73a] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

REMITTITUR—Filed Jan. 10, 1951

This cause having been argued and submitted, and fully considered, judgments are ordered as follows:

It is ordered and adjudged that the judgments made and entered in the Justice Court of the National Township, County of San Diego, State of California, in the above entitled cause, be and the same are hereby affirmed.

(S.) Turrentine, Presiding Judge; Burch, Judge; Glen, Judge.

[File endorsement omitted.]

Jan. 10, 1951.

[fol. 74] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT AND REQUEST FOR STAY OF REMITTITUR—Filed January 15, 1951

[fol. 75] To the Appellate Department of the Superior Court:

Notice Is Hereby Given that the defendants and appellants in the above-captioned suit and controversy intend to appeal and do hereby appeal from the above Superior Court, Appellate Department thereof, to the Supreme Court of the United States to review its final Judgment and Decision, affirming the final Judgment of the Justice's Court of National Township, California.

Appellants request a Stay of Issuance of Remittitur to the Justice's Court of National Township of San Diego County, California, and the enforcement of the Judgment of the above-mentioned Court until such time as the Superior Court of the State of California in and for the County of San Diego Appellate Department shall be advised of the

final action of the United States Supreme Court in said matter.

(S.) Manuel R. Ruiz, Jr., Attorney for Defendants and Appellants.

Dated: January 12, 1951.

[File endorsement omitted.]

[fol. 76] In the Superior Court of California

[Title omitted]

Order Staying Remittitur and Execution & Recalling Remittitur—Filed January 15, 1951

[fol. 77] Upon application of the appellants for a Stay of Remittitur and Stay of Execution of the Judgment of this Court, it is hereby ordered that issuance and transmission of the Remittitur of this Court and the Order and Judgment of this Court in the above-entitled action be and the same is hereby stayed until such time as this Court shall be advised of the final action of the United States Supreme Court in said matter.

(S.) Turrentine, Judge.

Dated: ——, ——.

(S.) Burch, J. (S.) Glen, J.

[File endorsement omitted.]

[fol. 78] In the Superior Court of California

[Title omitted]

Praecipe for Record

To the Clerk of the Above Named Court:

You are hereby requested and instructed to prepare and [fol. 79] submit to the Clerk of the United States Supreme Court, Washington, D. C. a full and complete copy of the papers and files constituting the record of the above-named

court, upon the Appeal in the above-entitled cause, including the following papers:

(1) All papers certified or deposited with the Superior Court, Appellate Division, by the Honorable Lowell Howe, Justice of the Peace, National Township, California, including complaints, Agreed Statement of Facts, as well as exhibits included therein by reference, Docket, Judgment and Opinion of the Justice's Court, and Notice of Appeal to the Superior Court Appellate Department.

(2) All papers, documents, and records deposited with or received by the Superior Court, Appellate Division, from the Justice's Court of National Township of San Diego County, California, in connection with said Appeal, including Notice of Appeal, Statement on Appeal, Docket of the Superior Court Clerk, as well as the final Judgment, Decision, and Opinion of the Superior Court of the State of California in and for the County of San Diego, Appellate Department.

(3) Appellate's Petition for Rehearing and Order of Court Denying the Same, as well as this Praecipe.

(S.) Manuel R. Ruiz, Jr., Attorney for Appellants.

Dated: January 12, 1951.

[fol. 80] In the Superior Court of California

[Title omitted]

Order Recalling Remittitur—Filed January 15, 1951

It Appearing that Notice of Appeal to the United States Supreme Court and Request for Stay of Remittitur having [fol. 81] been filed herein. It Is Ordered that the Remittitur heretofore issued be and is hereby recalled.

Dated Jan. 15, 1951.

(S.) L. N. Turrentine, Presiding Judge.

[File endorsement omitted.]

[fol. 82] IN THE SUPERIOR COURT OF CALIFORNIA

MINUTE ENTRIES

Friday, December 10, 1950, Court Convenes at Ten A. M.

Present: Hon. L. N. Turrentine, Hon. Robt. B. Burch, Hon. W. A. Glen.

Clerk: T. H. Sexton, by J. G. Gruebele.
Reporter: Audrey Kerkhoff.

No. 161612

PEOPLE

vs.

GUERRA, BUCK & YOUNGREN

Comes the plaintiff, respondent by the District Attorney J. D. Keller appearing by Duane J. Carnes, and defendants, appellants by Manuel Ruiz, Jr. Said appeal presented with argument of counsel, and submitted on briefs filed, and order taken under advisement.

14 Dec., 1950—Opinion filed. Judgments, and orders denying motion in arrest of judgments, affirmed.

Friday, January 5, 1951

No. 161612

PEOPLE

vs.

GUERRA, BUCK & YOUNGREN

This matter having been submitted on briefs and taken under advisement, by the Court the petition for rehearing is denied.

[fol. 83] Monday, January 15, 1951

No. 161612

PEOPLE

vs.

BUCK, et al.

Defendants having this day filed Notice of Appeal to the Supreme Court of the United States, Praecipe for transcript and Application for recall of Remittitur from the Justice's Court, it is ordered that the Remittitur herein be and is recalled in accordance with the order signed by the presiding judge filed this date.

Thursday, February 8, 1951

Objections to Transcript filed.

Tuesday, February 13, 1951

Order that Transcript be augmented as requested by objector.

[fol. 83a] EXHIBIT "A" TO JURISDICTIONAL STATEMENT

IN THE JUSTICE COURT OF NATIONAL TOWNSHIP

Ordinance No. 464 (New Series)

An Ordinance Regulating the Operation of Taxicabs Within the Unincorporated Area of San Diego County, and Requiring Permits and Licenses Therefor. (As Amended by Ordinances Nos. 609 (New Series), 958 (New Series), and 964 (New Series).

The Board of Supervisors of San Diego County do ordain as follows:

Section 1. As used in this ordinance, "taxicab" means a motor vehicle, as that term is defined in the Vehicle Code, used for the transportation of passengers for hire when

driven by the owner or by an agent of the owner at rates per mile, per trip, per hour, per day, per week, per month, or per other period of time, which vehicle is routed under the direction of the passengers or other persons hiring such vehicle.

Section 2. As used in this ordinance, "taxicab operator" means a person, firm, partnership, or corporation engaged in the business of running, driving, or operating one or more taxicabs and carrying passengers in such taxicab or taxicabs for hire within the unincorporated area of the County of San Diego.

Section 3. As used in this ordinance, "taxicab driver" means an individual who drives or is in actual physical control of a taxicab in which passengers are carried for hire within the unincorporated area of the County of San Diego.

Section 4. (*Amended by Ord. No. 958 adopted 4-10-50, and amended again by Ord. No. 964 (New Series) adopted 5-22-50 to read as follows:*) Within 10 days from the effective date of this ordinance every taxicab operator shall apply to the sheriff and procure from the Tax Collector a license and pay an annual license fee of $50.00 (plus $1.00 per year per taxicab), which shall be paid by the applicant to the Tax Collector and shall be due on the first day of June of each year. Licenses issued subsequent to the first day of September, the first day of December, and the first day of March shall be issued at a quarterly reduction of $12.50 per quarter.

The sheriff may in his discretion direct the Tax Collector to issue a temporary permit pending final action on such application for license. If a license is revoked the license shall be forthwith surrendered to the sheriff, who shall thereupon deliver to the licensee a requisition for the refund of the unearned portion of the license fee, calculated to the nearest month. The sheriff may deny the application or having issued the license may revoke the same if the sheriff shall determine that the applicant or taxicab operator is of bad moral character or is guilty of violation of any of the provisions of this ordinance or of any lawful regulation promulgated pursuant thereto or has been convicted of any offense involving moral turpitude.

Applications for taxicab operator's licenses shall be filed with the sheriff on a form furnished by the sheriff which, when completed, will contain full personal information con-

cerning the applicant, type of business to be conducted and description of equipment to be used.

Any person whose taxicab operator's license shall have been revoked or renewal thereof is refused by the sheriff may within ten days after receipt of notice thereof appeal to the Board of Supervisors for a hearing thereon and the decision of the Board of Supervisors shall be final. If no appeal is taken within ten days the action by the Sheriff shall be final.

[fol. 83b] To facilitate the hearing and disposition of such appeal, the Board of Supervisors may appoint a referee to take testimony and to report his findings and recommendations to the Board. If the Board appoints a county officer or county employee to act as referee, he shall serve as such referee without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position.

Section 5. The Tax Collector shall not issue a taxicab operator's license or permit unless and until instructed to do so by the sheriff.

Section 6. Every applicant for a taxicab operator's license shall file his application with the sheriff on a form to be furnished by the sheriff. The application shall be signed by the applicant and shall contain:

a) Name and address of the applicant.

b) Kind and amount of public liability and property damage insurance covering each vehicle to be used for the acceptance or carriage of passengers for hire within the County.

c) Owner's trade name and business address.

d) Number of vehicles to be used for accepting or carrying passengers for hire within the county, their make, model (year) and seating capacity.

e) Schedule of rates to be charged.

f) Such further information as the sheriff may require.

Section 7. The sheriff shall not order the issuance of any taxicab operator's license or temporary permit until the applicant first files with the sheriff a policy or certificate of insurance, which policy or certificate shall comply with

the provisions of this ordinance, and shall first be approved by the district attorney.

Section 8. The policy of insurance required before a taxicab operator's license or permit can be issued shall insure the public against any loss or damage for which the operator is legally liable that may result to any person or property from the operation of any taxicab used by the taxicab operator in his business as such. The maximum amount of recovery in such policy shall not be less than the following sums:

a) For the injury to any one person, or the death of any one person in any one accident, $10,000.

b) For the injury to two or more persons, or the death of two or more persons, or the injury to one person or more, and the death of one person or more, in any one accident, $20,000.

c) For the injury or destruction of property in any one accident, $5,000.

Section 9. (*Amended by Ord. No. 609 (New Series) adopted 5-12-47; and again amended by Ord. 958 (New Series) adopted 4-10-50, to read as follows:*) It shall be unlawful for any person to drive or to be in actual physical control of any taxicab in the unincorporated area of the County of San Diego without first obtaining a permit in writing so to do from the sheriff of the County of San Diego.

Applicants for such permits shall file applications therefor with the sheriff of the County of San Diego on a form furnished by the sheriff which, when completed, will contain full personal information concerning the applicant.

Upon obtaining a permit as herein required the holder of such permit shall be entitled to an identification card of such design, and bearing such number as the sheriff may prescribe, upon payment of a fee of $1.00 annually, therefor, which shall be paid by the applicant to the tax collector and shall be due on the 1st day of June of each year. Such card shall be carried by the permittee during all business hours and shall not be transferable.

[fol. 83c] Each applicant for a permit shall be examined by the sheriff as to his knowledge of the provisions of this ordinance, the Vehicle Code, traffic regulations and the geography of the county, and if the result of the examina-

tion is unsatisfactory he shall be refused a permit. The sheriff may deny the application or having issued the permit may revoke the same if the sheriff shall determine that the applicant or taxicab driver is of bad moral character or is guilty of violation of any of the provisions of this ordinance or of any lawful regulation promulgated pursuant thereto or has been convicted of any offense involving moral turpitude.

The sheriff may in his discretion direct the tax collector to issue a temporary permit pending final action on such application for permit. If a permit is denied or revoked, the permit shall be forthwith surrendered to the sheriff. No portion of the fee for a temporary or permanent taxicab driver's permit shall be returnable upon denial or revocation of such permit.

Any person whose taxicab driver's permit shall have been revoked or renewal is refused by the sheriff, may with ten (10) days after receipt of notice thereof, appeal to the Board of Supervisors for a hearing thereon and the decision of the Board of Supervisors in this regard shall be final. If no appeal is taken within ten days, the action of the sheriff shall be final.

To facilitate the hearing and disposition of such appeal, the Board of Supervisors may appoint a referee to take testimony and to report his findings and recommendations to the Board. If the Board appoints a county officer or county employee to act as referee, he shall serve as such referee without any additional compensation. All time spent as a referee shall be considered as time spent by such officer or employee in performing the duties of his position.

Section 10. At time of filing application, every taxicab operator operating in the unincorporated area of the County of San Diego shall file with the sheriff a true and correct statement of the rates to be charged for the transportation of passengers in any and all vehicles for hire operated by said operator, and such operator shall not change or modify said rates in any manner without first obtaining written approval from the sheriff and the filing of said modified or changed rates with the sheriff.

There shall be displayed in the passenger compartment of each taxicab in full view of the passengers a card not less than four inches by six inches in size, which shall have plainly printed thereon the name of the operator, or the

fictitious name under which said operator operates, the business address and telephone number of said operator, and a correct schedule of the rates to be charged for conveyance in said vehicle.

Section 11. (*Amended by Ord. No. 958 (New Series) adopted 4-10-50, to read as follows:*) Every taxicab operator shall keep such records and make such reports as the sheriff may require. The sheriff may adopt reasonable regulations not inconsistent with the provisions of this ordinance and the same shall be in force from and after their approval by resolution of the Board of Supervisors.

Section 12. It shall be unlawful for any person to solicit passengers for taxicabs in any public street, sidewalk, highway or place in the unincorporated area of the County of San Diego except the driver thereof when seated within the vehicle.

Section 13. Any person, firm or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by forfeiture of his permit, and by a fine not exceeding Five Hundred Dollars ($500), or by such forfeiture and imprisonment in the county jail for not more than six (6) months, or by both such forfeiture, fine and imprisonment.

[fol. 88d] Section 14. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, the Board of Supervisors hereby declares that it would have passed this ordinance irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases thereof be declared unconstitutional.

Section 15. This ordinance shall take effect and be in force at the expiration of thirty days from and after its passage, and before the expiration of fifteen days after its passage it shall be published once, with the names of the members voting for and against the same, in the San Diego Union, a newspaper of general circulation published in the County of San Diego.

Passed, approved and adopted this 1st day of April, 1946.

(S.) David W. Bird, Chairman of the Board of Supervisors of the County of San Diego, State of California.

The above ordinance was adopted by the following vote:
Supervisor DeGraff Austin, voting "Aye"
Supervisor David W. Bird, voting "Aye"
Supervisor James A. Robbins, voting "Aye"
Supervisor Dan Rossi, voting "Aye"
Supervisor Dean E. Howell, voting "Aye"

Attest my hand and the seal of the Board of Supervisors this 1st day of April, 1946.

J. B. McLees, County Clerk and ex officio Clerk of the Board of Supervisors. By: (S.) M. Nasland, Deputy.

[fol. 84] EXHIBIT "C" TO JURISDICTIONAL STATEMENT

IN THE JUSTICE'S COURT OF NATIONAL TOWNSHIP

Docket No. 2092

Docket No. 2091

Docket No. 2090

[Title omitted]

OPINION OF COURT

The County Ordinance which the defendants are accused of violating provides that:

(1) It shall be unlawful for any person to drive, or be in actual physical control of any taxicab in the unincorporated area of the County of San Diego without first obtaining a permit in writing so to do from the Sheriff of the [fol. 85] County of San Diego.

(2) The Sheriff may deny the application, or having issued the license, may revoke the same if the Sheriff shall determine that the applicant, or taxicab operator, is of bad moral character, or is guilty of violating any of the provisions of this Ordinance, or of any lawful regulation promulgated pursuant thereto, or has been convicted of any offense involving moral turpitude.

(3) Every applicant within ten days from the Sheriff's decision may appeal to the Board of Supervisors.

(4) Every taxicab operator shall—pay an annual license fee of fifty dollars, plus one dollar per year per taxicab.

The pertinent facts are as follows:

(1) The defendants, at a time when said Ordinance was in full force and effect, were not licensed to operate taxicabs in the unincorporated area of the County of San Diego by the Sheriff of San Diego County.

(2) The defendants, while not so licensed and while the Ordinance was in full force and effect, drove taxicabs carrying passengers for hire through an unincorporated area of the County of San Diego.

(3) The defendants had picked up said passengers within the Republic of Mexico, on the Mexican side of the International Border, in what is known as the Mexican Federal Zone.

[fol. 86] (4) The defendants had been instructed by their passengers to carry them and were carrying them to destinations in the City of San Diego, outside the unincorporated area of the County of San Diego.

(5) The defendants, prior to the said carrying of passengers, and while the said ordinance was in full force and effect, applied to the Sheriff for a permit, and were denied. They did not appeal to the Board of Supervisors.

The defendants admit the foregoing facts, but by way of defense advance the following contentions:

(1) That the Ordinance is unconstitutional on its face.

(2) That the Ordinance is inapplicable to the defendants because the activity in which they are engaged is foreign commerce.

(3) That the fifty dollar license fee is an unreasonable burden on foreign commerce.

(4) That the Sheriff unlawfully refused licenses to the defendants.

This Court does not question the proposition that it is its duty to consider the constitutionality of the Ordinance and disregard the Ordinance if in its opinion the Ordinance is unconstitutional.

The defendants contend the Ordinance is invalid because [fol. 87] it authorizes the Sheriff to refuse an applicant a license if he determines that the applicant is of "bad moral character", but provides the Sheriff with no standard for use in making such a determination. This Court considers only whether "good moral character" is an expression so vague as to invalidate the Ordinance. If the Sheriff in-

correctly found the defendants to lack "good moral Character" their remedy is appeal to the Board of Supervisors, and the question may be reviewed by the Superior Court in mandamus or certiorari. "Good moral character" has for a long time been included in the statutes as a prerequisite to the exercise of certain privileges, as, for example, the right to practice law. In the opinion of the Court it is an acceptable test.

The defendants also contend that the Ordinance is invalid because it contains nothing within the police power not already covered by state law. However, the Ordinance does require of the applicant a knowledge of the geography of the County.

In the opinion of this Court the Ordinance is constitutional on its face.

The defendants contend that the fifty dollar annual license fee is an unreasonable burden on foreign commerce. [fol. 88] There is no evidence in the stipulated facts as to the cost of enforcing the Ordinance, and, in the absence of such evidence, the Court will assume that the fee was reasonable. The Court also finds in the records of this Court of which it takes judicial notice, that the activity of the defendants involves the driving of taxicabs daily through the unincorporated area of the County. Apparently their activity, although foreign commerce, requires as much supervision as the business of taxicab drivers operating entirely within the County.

The defendants contend they cannot be required to obtain a license because they are not doing business in San Diego County. The Ordinance is a police measure and not merely a tax on business. In the opinion of this Court the Ordinance is applicable to the defendants.

The defendants contend that the Sheriff, under color of authority, unlawfully discriminated against the defendants to suppress competition. This Court will not consider this question. If the defendants believe the Sheriff refused a license through either error or prejudice their remedy is appeal to the Board of Supervisors and the Superior Court.

In the opinion of this Court the defendants are guilty as [fols. 89-94] charged and they are directed to appear in Court on September 18, 1950, at 9:00 A. M.

(S.) Lowell Howe, Justice of the Peace of National Township.

[fol. 95] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

ORDER ALLOWING APPEAL

Defendants, Norman H. Buck, Miguel R. Guerra, and Louis C. Youngren, having made and filed their petition on January 12, 1951, praying for an Appeal to the Supreme Court of the United States from the final judgment and decree of the Superior Court of the State of California in and for San Diego County, Appellate Department, entered on January 10, 1951, and from each and every part thereof, and having presented their Assignment of Errors and [fol. 96] Prayer for Reversal and their Statement as to the Jurisdiction of the Supreme Court of the United States on Appeal, pursuant to the Statutes and Rules of the Supreme Court of the United States, in such cases made and provided,

Now therefore it is hereby ordered that said Appeal be and the same is hereby allowed as prayed for.

It is further ordered that citation shall issue in accordance with law.

(S.) L. N. Turrentine, Presiding Judge.

[fol. 97] IN THE SUPERIOR COURT OF CALIFORNIA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 4, 1951

Norman H. Buck, Miguel R. Guerra, and Louis C. Youngren, defendants in the above-entitled cause, in connection with their appeal to the Supreme Court of the United States, hereby file the following Assignment of Errors upon which they and each of them will rely in the prosecution of said appeal from the final judgment of the Superior Court of the State of California in and for the County of San Diego, Appellate Department entered on January [fol. 98] 10, 1951.

I

The Appellate Court failed to consider and pass upon the point that the defendants and each of them were deprived of their constitutional rights, under color of law.

The Appellate Court restricted its decision and opinion to the point that the ordinance was on its face consistent with the Federal Constitution, and failed to determine that the acts of the Sheriff of the County of San Diego exceeded the local application of the ordinance, and under color or pretense thereof nevertheless violated the Federal law, and arrested the defendants while lawfully engaged in foreign commerce, by the unconstitutional enforcement of the law, amounting to A PROHIBITION. The evidence indicated that the license issued to defendant Buck was cancelled because said defendant stationed his cab and operated out of Mexico, without the permission of the Sheriff. Said defendant's character and morals were not remotely involved in the arbitrary cancellation.

II

The Appellate Court erroneously assumed that the annual license fee charged by respondent as a prerequisite to the physical control of a taxicab within respondent County Limits, was the munificent sum of $1.00 per year, when in fact the Ordinance in evidence required that defendants [fol. 99] first apply to the Sheriff and procure from the tax collector a license and pay an annual license fee of $50.00. The palpable difference in amount impels a reconsideration as the presumptions of law indulged in by the Appellate Court, are inapplicable. In any event, defendants tendered the $50.00 to respondent Sheriff, which was refused. That any tender or applications made of license by one engaged in foreign commerce is refused.

III

The Appellate Court failed to reconsider that in a prior Federal case between the same parties involving the same licenses and which constitutes an estoppel in evidence, the United States District Court, in its decision holding a portion of the ordinance unconstitutional, did not hold that an appeal to the San Diego Board of Supervisors or State Courts, was a prerequisite to a valid attack on the constitutionality of the ordinance. That said decision forms, by stipulation, a part of the case at bar, and is consistent with the defendants' theory that a license from the County of San Diego is not essential to engage in foreign commerce.

IV

The Appellate Court assumed that the only political subdivision requiring "fitness to operate taxicabs on the [fol. 100] State highways" as the County of San Diego. The record indicated that defendants were possessed of Chauffeurs' Cards permitting the driving of taxicabs for hire, by the Chief of Police of the City of San Diego, in addition to being possessed of Chauffers' licenses issued by the Department of Motor Vehicles of the State of California, as well as Motor Vehicle Transportation Licenses which authorizes the defendants and each of them to engage in transportation of persons or property for hire or compensation over the public highways of the State of California.

Defendants aver that said Superior Court of the State of California in and for the County of San Diego, Appellate Department, is the highest court of the State of California in which said decision could be had. That the judgment was rendered in a suit involving a case or controversy, that the case presents a substantial Federal question, that the Federal question sought to be reviewed was properly raised and preserved in said Court and does not rest upon a State ground.

Wherefore, defendants hereinabove pray that the final decree of the Superior Court of the State of California in and for the County of San Diego, Appellate Department, be reversed, and for such other relief as the Court may deem fit and proper.

Manuel Ruiz, Jr., Attorney for Appellants, 704 South Spring Street, Los Angeles 14, California.

[File endorsement omitted.]

[fols. 101-138] AFFIDAVIT OF SERVICE BY MAIL—Omitted in printing

[fol. 139] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS RELIED ON AND DESIGNATION OF RECORD TO BE PRINTED—Filed July 12, 1951

Pursuant to Rule 13, Paragraph IX of this Court, appellants adopt for their Statement of Points upon which they intend to rely on the Appeal before this Court, the points contained in the Assignment of Errors as well as those contained in the Amplification of Statement as to Jurisdiction heretofore filed.

Appellants designate the entire record as filed in the above entitled case for printing by the Clerk of this Court.

Morris Lavine, Counsel for Appellants.

[File endorsement omitted.]

[fol. 140] Affidavit of Service by Mail omitted in printing.

[fol. 141] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 165

[Title omitted]

ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS—October 8, 1951

On Consideration of the motion for leave to proceed herein *in forma pauperis*,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 142] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 165

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—October 8, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsed on Cover:] In forma pauperis. File No. 55,358. California Superior Court in and for the County of San Diego. Term No. 165. Norman H. Buck and Miguel R. Guerra, Appellants, vs. The People of the State of California. Filed July 2, 1951. Term No. 165 O.T. 1951.